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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,702	11/09/2001	Keith W. Diveley	020375-004010US	4413
20350	7590	12/27/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			ART UNIT	PAPER NUMBER

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/990,702

Applicant(s)

DIVELEY, KEITH W.

Examiner

James A. Reagan

Art Unit

3621

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):  
  
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## **DETAILED ACTION**

### **Status of Claims**

1. This action is in response to the Appeal Brief filed on 14 October 2005.

### **Rules of Practice Before the BPAI**

2. Content and format of the appeal brief (§ 41.37)
  - One copy of the brief is required rather than three copies consistent with the implementation of IFW.
  - The brief is required to be filed within two months from the date of filing of the notice of appeal.
  - The time period is extendable under § 1.136 for patent applications and §1.550(c) for ex parte reexamination proceedings. See § 41.37(0).
  - The brief can no longer be filed within the time period for reply to the action from which the appeal was taken.

3. The brief must contain the following items (§ 41.37(c)):

Real party in interest (similar to former § 1.192). A statement identifying by name the real party in interest even if the party named in the caption of the brief is the real party in interest.

Related appeals and interferences (similar to former § 1.192). Identification of all other prior and pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision.

Status of claims (similar to former § 1.192). The status of all the claims in the proceeding (e.g. rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of the appealed claims.

Status of amendments (same as former § 1.192). A statement of the status of any amendment filed subsequent to final rejection.

Summary of claimed subject matter (replacing "summary of invention").

- A concise explanation of the subject matter defined in each of the independent claims involved in the appeal,
- Must refer to the specification by page and line number, and to the drawing, if any, by reference characters,
- For each independent claim involved in the appeal and for each dependent claim argued separately,
- Every means plus function and step plus function must be identified, and
- The structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Grounds of rejection to be reviewed on appeal (replacing "issues for review" and "grouping of claims").

- Example: Claims 1 to 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. X

Argument (has been revised).

- A separate heading is required for each ground of rejection.
- Any claim(s) argued separately should be placed under a subheading.
- A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.
- When multiple claims subject to the same ground of rejection are argued as a group, the Board may select a single claim from the group to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.

Claims appendix (similar to former § 1.192).

- A copy of the claims involved in the appeal.

Evidence appendix (new)

- Copies of any evidence entered and relied upon in the appeal.

Related proceedings appendix (new)

- Copies of decisions rendered by a court or the Board in any proceeding identified in the related appeals and interferences section.

4. The examiner will review the brief to determine whether the items required by § 41.37(c) are present. If a brief does not comply with the requirements set forth in § 41.37, the appellant will be notified of the reasons for noncompliance. Appellant will be given 1 month or 30 days from the mailing of the notification of non-compliance, whichever is longer, to file an amended brief.
5. In the present case, the currently filed appeal brief is missing the evidence appendix and the related proceedings appendix. Correction is required.

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Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **James A. Reagan** whose telephone number is **571.272.6710**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Trammell** can be reached at **571.272.6712**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington, D.C. 20231**

or faxed to:

**571-273-8300** [Official communications, After Final communications labeled "Box AF"]

**571-273-8300** [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to the **United States Patent and Trademark Office Customer Service Window:**

Randolph Building

401 Dulany Street

Alexandria, VA 22314.

**JAMES A. REAGAN**

Primary Examiner

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21 December 2005

A handwritten signature in black ink, appearing to read 'J. A. Reagan', with a long horizontal stroke extending to the right.